REMARKS

Claims 1-31 and 37-41 are pending in the current application. Claims 1, 7, 14, 19, 25, 32 and 37-41 are independent claims. Claims 32-36 have been withdrawn. Claims 39-41 have been amended.

It is believed that this Amendment, in conjunction with the following remarks, at least presents the claims in better form for consideration on Appeal. In particular, the preambles of claim 39-41 have been amended to satisfy the requirements of 35 U.S.C. §101 as indicated by the Examiner. Accordingly, entry of this Amendment and favorable consideration of the application are respectfully requested in view of the foregoing amendments and the following remarks.

35 U.S.C. §101 Rejection

Claims 39-41 stand rejected under 35 U.S.C. §101 for allegedly being directed to non-statutory subject matter. By the present Amendment, the preamble of each of claims 39-41 has been amended to recite "[a]computer-readable medium including program code stored thereon, which, when executed by a machine, causes the machine to perform actions, the program code comprising". Applicant respectfully submits that independent claims 39-41 as amended recite statutory subject matter as the limitations recited therein are not directed merely to functionally descriptive material as noted in MPEP 2106.01. Withdrawal of this rejection is respectfully requested.

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Reply to Examiner's Response to Arguments

Since the Examiner has maintained the prior rejections and has provided arguments in support of this position, Applicant will address the Examiner's response first.

1. Response to the Examiner's remarks regarding Walsh codes

The Examiner states:

> The applicant also argues Lindskog does not disclose assigning more than one channel with different Walsh codes. The claimed subject matter does not mention directly using different Walsh codes, only different codes. Taken in its broadest general interpretation, codes does not limit the claimed subject matter to Walsh codes.
>
> *(See Page 2 of the 8/5/2008 Final Rejection)*

The Examiner appears to be indicating that Applicant's prior comments regarding Walsh codes were intended to describe the scope of the claims. However, this is not the case. The Examiner is reading the claimed "codes" and "sub-codes" upon Lindskog's teaching of a code tree that includes OVSF codes at Paragraphs [0025]-[0028], [0030], [0037] and [0044] (e.g., see Pages 3-4 of the 8/5/2008 Office Action). In Paragraph [0025], Lindskog states:

> [0025] As is well known to a person skilled in the art, the channelization codes used for spreading are Orthogonal Variable Spreading Factor (OVSF) codes, *which basically are orthogonal Walsh codes of different length.*
>
> *(See Paragraph [0025] of Lindskog, Emphasis added)*

Applicant's prior references to Walsh codes being relevant was to show that the Examiner's application of Lindskog cannot read on the claims, not to infer limits on the scope of the claims. The Examiner is correct in stating that the claims could read on codes other than Walsh codes, but Lindskog's teachings appear limited to OVSF or Walsh codes, and as such the teachings of Lindskog related to OVSF or Walsh codes are important in determining whether or not any portion of the claim language reads on this reference. Thus, if the Examiner continues to cite to Lindskog and read the claimed "codes" and "sub-codes" upon the OVSF code tree, then it

is reasonable for Applicant to comment on Walsh codes to explain deficiencies of Lindskog as applied in this rejection.

2.   Response to the Examiner's argument that Lindskog teaches assigning multiple codes to the same mobile station

The Examiner states:

> Applicant's arguments have been fully considered but they are not persuasive. The applicant argues the combination does not teach or suggest "assigning a second sub-code derived from the first code to support a supplemental channel to the second subscriber station." The examiner respectfully disagrees. The code tree as seen in Fig. 2 shows how codes are derived from higher codes. Lindskog goes on to disclose selecting codes for allocation depending on rate needed. Paragraphs 25-30 go into greater detail of the different codes from the code tree as seen in Fig. 2 and explained below in the current action.

(See Page 2 of the 8/5/2008 Final Rejection)

The Examiner seems to be describing the general process of code allocation in Lindskog. However, this does not address multiple codes being assigned to a single mobile station (e.g., the claimed "second subscriber station"). In Lindskog, codes (i.e., Walsh codes) are allocated to subscribers in response to a channel request (e.g., see 301 of FIG. 3 at [0034], or 401 in FIG. 4A at [0039] of Lindskog). The only way two channels would be allocated to a subscriber station in Lindskog is if two separate channel requests were received, and there is absolutely no basis for this conclusion in Lindskog at the paragraphs referenced by the Examiner. The level of a code in the code tree of Lindskog relates to how *large* the channel resource is, but any single allocated code still corresponds to a single channel.

Independent claim 1, in an example, states "assigning a second code to support a dedicated channel to a second subscriber station" and "assigning a second sub-code derived from the first code to support a supplemental channel to the second subscriber station". Lindskog only

teaches allocating a Walsh code at a given level (or bandwidth/size) of a OVSF code tree, upon request, for channel allocation to a mobile station.

Lindskog does not disclose or suggest receiving requests for two different channels from the same station (e.g., contrast with "assigning ... a dedicated channel to a second subscriber station" and "assigning ... a supplemental channel to the second subscriber station" as recited in claim 1), nor does Lindskog disclose or suggest receiving requests for two different channels from the same station with one of the code requests being for a sub-code derived from a code for which another sub-code has been allocated to another station (e.g., contrast with "assigning *a second sub-code derived from the first code* to support a supplemental channel to the second subscriber station" as recited in claim 1, emphasis added). There is absolutely no such teaching to be found in Lindskog, and the secondary reference ("Scherzer") is applied only to show that channel requests in Lindskog can potentially come from two different mobile stations.

Again, absent from Lindskog and/or Scherzer is an allocation of multiple channels (i.e., "a dedicated channel" and "a supplemental channel" as recited in claim 1, for example) to the same mobile station, not to mention the additional claimed code-relationships of the respective channel allocations as mentioned above. The Examiner's continued reference to the general code-tree allocation structure of Lindskog has not addressed Applicant's argument as presented above (and also presented in Appilcant's previously filed response of 4/29/2008).

Applicant respectfully requests consideration of the remarks above, and an indication of allowance for this application.

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SUMMARY

Claims 1-31 and 37-41 remain rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Publication No. 2006/0120322 ("Lindskog") in view of U.S. Patent No. 6,901,062 ("Scherzer"). Applicant once again traverses this rejection. Applicant expressly maintains the reasons from the prior responses to clearly indicate on the record that Applicant has not conceded any of the previous positions relative to the maintained rejections. For brevity, Applicant expressly incorporates the prior arguments presented in the April 29, 2008 response without a literal rendition of those arguments in this response.

For at least the foregoing reasons and the reasons set forth in Applicant's response of April 19, 2008, it is respectfully submitted that claims 1-31 and 37-41 are distinguishable over the applied art. The remaining dependent claims are allowable at least by virtue of their dependency on the above-identified independent claims. See MPEP § 2143.01. Moreover, these claims recite additional subject matter, which is not suggested by the documents taken either alone or in combination.

Therefore, it is respectfully submitted that the rejection be withdrawn and that the claims be allowed.

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CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: November 5, 2008

By: _____

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